Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JACK L. SHERARD and DOUGLAS H. MASSEY

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Appeal No. 2000-1011
Application 09/042,761

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ON BRIEF

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Before CALVERT, PATE, and BAHR, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 15 and 17 through 21. These are the only claims remaining in the application.

The claimed invention is directed to a vehicle restraint for use at loading docks. The specific subject matter is an improvement in an existing restraint wherein the pivoting restraining member is permanently biased into the restraining

position.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A vehicle restraint for restraining a vehicle adjacent a loading dock, the vehicle restraint comprising:

a base member adapted to be mounted in front of a face portion of the dock;

a carriage movably mounted to said base member;

a restraining member mounted to said carriage and movable between an engaged portion in which said restraining member is adapted to engage the vehicle and a disengaged position in which said restraining member is adapted to disengage the vehicle, said restraining member being biased toward the engaged position;

a drive mechanism capable of moving said restraining member between the engaged and disengaged positions; and

a clutch connecting said drive mechanism to said restraining member.

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Hageman	4,759,678	Jul. 26, 1988
Hahn et al. (Hahn)	5,702,223	Dec. 30, 1997

REJECTIONS

Claims 1 through 15 and 17 through 21 stand rejected

under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 15, 20 and 21 stand rejected under 35 U.S.C. § 102 as anticipated by Hageman.

Claims 1 through 14 and 17 through 19 stand rejected under 35 U.S.C. § 103 as unpatentable over Hageman.

Claims 15, 20 and 21 stand rejected under 35 U.S.C. § 102 as anticipated by Hahn.

Claims 1 through 14 and 17 through 19 stand rejected under 35 U.S.C. § 103 as unpatentable over Hahn.

The appeal brief includes a statement by the appellants that the claims do not stand or fall together, and the brief includes separate arguments directed to individual claims.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review we have determined that claims 1 through 15 and 17 through 19 are not indefinite under 35

U.S.C. § 112, second paragraph. We have further determined that the applied prior art does not anticipate or render obvious the claimed subject matter on appeal. Therefore the rejections of all claims on appeal are reversed. Our reasons follow.

Turning first to the rejections under 35 U.S.C. § 112, second paragraph, the examiner first questions exactly when the restraining member is biased toward the engaged position. We agree with the appellants that this portion of claims 1, 15 and 20 is directed to broadly claiming the restraining member biasing and does not render any of the independent claims indefinite within the purview of 35 U.S.C. § 112. Next, the examiner questions the means by which the restraining member is biased. Here again, we agree with the appellants that it is not necessary that the biasing mechanism be recited. The examiner next questions what portion of the vehicle is structurally engaged by the claimed subject matter. Here again, we agree with the appellants that the claim is merely

broad in this regard and is not indefinite.

With respect to claim 1 alone, the examiner questions whether the biasing means is the same or different from the drive mechanism, and further questions the workings of the clutch. The appellants are correct when they state that the drive mechanism and the restraining member biasing means are individually claimed, and claim 1, while broad, is not indefinite therefore. Finally, with respect to claims 15 and 20 the examiner states that "no motive means to move the carriage has been recited and therefore the claim is incomplete." Here again, the appellants are correct that the claim is merely broad with regard to these features, and the claimed subject matter is not indefinite in this respect. Finally, we note the last sentence in the examiner's answer on page 3, wherein the examiner states that "it is not understood how and when the claimed clutch functions." We note that if this were indeed the case, a rejection under 35 U.S.C. § 112, first paragraph, might be proper, but this certainly is not a rejection properly grounded under 35 U.S.C. § 112,

second paragraph.[1]

Turning to the rejection of claims 15, 20 and 21 under 35 U.S.C. § 102 as anticipated by Hageman, we note that both the general dictionary definition of the term "bias", and appellants' specification makes clear that the term "bias" as used in appellants' claims denotes a force tending to move a mechanism in a certain direction at all times. We note that hydraulic cylinder 15 of Hageman only moves the restraining member toward the engaged position when the carriage is in the highest position. When the carriage is lowered, the cylinder 15 no longer "biases" the restraining member toward the engaged position. Thus, Hageman does not disclose all the features of claims 15, 20 and 21.

Turning to the obviousness rejection of claims 1 through 14 and 17 through 19 under 35 U.S.C. § 103 as unpatentable over Hageman, we disagree with the examiner that a conventional disconnect clutch would have been obvious when

[1] We note several instances in the specification wherein the friction clutch is stated as not shown. However, the clutch is claimed in claim 1. Accordingly, an objection to the specification and drawing under 37 CFR 1.83(a) would be proper in this circumstance.

considering the Hageman invention. In fact, the conventional clutch as described in the prior art works with a rotational motor which Hageman does not disclose. Likewise, it is unclear to us how a conventional lever arrangement could be combined with the structure shown in Hageman. The examiner offers no explanation. Likewise, with respect to claims 8, 10, 14 and 17 through 19 as well as claims 12 and 13, the examiner has no explanation of how his catalog of components could be incorporated in the Hageman device. Furthermore, the examiner includes not a single word with respect to the suggestion or motivation for making these changes.

With respect to claims 15, 20 and 21 as rejected under 35 U.S.C. § 102 as anticipated by Hahn, we note that the biasing means disclosed in Hahn is identified by the examiner as means 92. In actuality this is a screw motor, which as far as we know provides no biasing effect at all. Hahn does not disclose a biasing means operative between the carriage and the restraining member.

With respect to claims 1 through 14 and 17 through 19 the examiner provides two sentences to explain the scope and

content of the prior art and the differences between the prior art and the claimed subject matter with respect to eight groups of claims. We, like the appellants, find it difficult to even respond to such a rejection. We do emphasize that in no way can it establish a proper evidentiary basis for *a prima facie* case of obviousness. The art rejections of claims 1 through 14 and 17 through 19 are reversed.

In summary we have reversed all rejections on appeal.

REVERSED

IAN A. CALVERT	)
Administrative Patent Judge	)
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	)
	) BOARD OF PATENT
WILLIAM F. PATE III	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
JENNIFER D. BAHR	)
Administrative Patent Judge	)

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